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In The
Supreme Court of the United States

OCTOBER TERM, 1965

No. 656

BARBARA ELFBRANDT, PETITIONER

vs.

IMOGENE R. RUSSELL, ET AL.

RESPONDENTS ANSWERING BRIEF

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QUESTIONS PRESENTED FOR REVIEW

Respondents respectfully submit that certain of the questions presented for review are not properly before the Court for the reason that they are incorrect in fact and in law.

Specifically on page 3 petitioner refers to "false swearing" and "necessity of an oath". The statute in question clearly allows an affirmation as an alternative to an oath and consequently the penalty is for perjury, not for false swearing.

In addition the next "question" attempts to raise an issue of "administrative regulation" of conduct. There are no provisions in the law relative to administrative regulations. The

only administrative duty is a ministerial act of filing an oath or affirmation and certifying that a salary can be paid.

In addition on page 5 of her brief the petitioner alleges that there is a difference in the duty or obligation imposed on the public employees and a duty or obligation imposed on all of the citizens. Since the sedition statute, A.R.S., 13-707 (not challenged herein) applicable to all persons, and the perjury statute applicable to public employees are exactly the same, the burden is exactly the same. A.R.S., 13-1641 states that an act which is punishable in different ways by different sections of law may be punished under either but in no event under more than one section of the law.

SCANDALOUS MATTER

The respondents respectfully request in accordance with Rule 40(5) of the rules of this Court that the Court strike from the brief the sentence on page 11 beginning with the words "to submit to" and ending with "of the government". The statement is one of fact not warranted by the record and is an unsubstantiated and unwarranted insult to the entire bench and bar, in fact to all the million and half citizens of the State of Arizona.

STATEMENTS OF FACT NOT PART OF THE RECORD

There are numerous allegations and statements of fact in the brief which are not supported in the record or supportable in fact. Respondents will deal with them individually as they occur in the argument if possible, but feel constrained at the outset to point out one allegation in particular which is initially stated at page 10 and reiterated directly or by implication elsewhere.

Petitioner states:

> "It was clear that in good conscience a great number of people could not sign the oath".

There is not one jot or tittle in the record to support this. Respondents do not wish to copy petitioner's error in alleging mat-

ters outside the record, but we would be remiss in our duty if we did not state that there has been no indication whatsoever of any person other than the petitioner (and her husband) who found any difficulty with the oath or affirmation.

SUMMARY OF ARGUMENT

1. Administrative Due Process is Not a Valid Issue

It is the position of the respondents that there is no administrative law issue for the simple reason that administrative agencies perform only the simplest ministerial act of filing the oath or affirmation and informing the disbursing officer. No agency is entitled to investigate, interrogate or discharge an employee for any violation of the law. The subscription of the oath or affirmation is simply a requirement of employment exactly the same as the oath required of federal employees since 1884, 5 U.S.C. 16; Territory and State Offices in Arizona since 1901, A.R.S. 38-231 and School Teachers in Arizona since 1935, A.R.S. 15-231. No civil service, merit system or tenure right which may exist or may have existed is or was affected by the law.

2. There Exists a Reasonable Need for a Reasonable Law Such as This.

The Arizona Legislature had a right to rely on matters of common knowledge in ascertaining potential danger to the state and local government functions. The bill itself as well as the Senate judiciary report indicates an intelligent approach with full regard for the rights of others. Much of the adverse reaction to some oaths is that they are disclaimers. The law in question is a simple, affirmative declaration. As for crimes specifically created, the prohibition of acts to overthrow the government by force and violence is not an issue. The prohibition against advocacy of the overthrow of government by force and violence has the prior approval of this Court. *Dennis v. United States,* 341 U.S. 494; *Uphaus v. Wyman,* 360 U.S. 72. The prohibition against becoming or remaining a member of the Communist party or any organization that has for one of its purposes the overthrow of the

government by force or violence is only a slight restriction of association in a limited area perfectly justified by circumstances and by the decision of this Court in *Gerende v. Bd. of Supervisors,* 341 U.S. 56.

3. There Is No Vice Of Vagueness in the Bill.

Baggett v. Bullitt, 377 U.S. 360 does not apply for the reason that the language found in the Washington law is simply not in the Arizona law. Only advocacy of the overthrow of the government by force or violence is prohibited, and such a prohibition is permissible under *Dennis* v. *United States,* 341 U.S. 494; *Gerende v. Bd. of Supervisors,* 341 U.S. 56, cited with approval in *Baggett v. Bullitt, supra.*

4. The Legislation is Not a Bill of Attainder.

The law imposes no punishment for past acts, names no one, designates no reasonably identifiable class. It makes no determination of guilt, it merely adds an additional qualification for employment which is not dependent upon past activities. The argument has no shadow or substance. *United States v. Brown,* 381 U.S. 437.

5. The Fifth Amendment is Not Involved.

Petitioner seems to state that a person must take the oath and thereby commit a crime (if actually guilty) or face condemnation before "the court of public opinion" (Petitioner's Br., 35). This is utterly untrue. A person in employment at the time of enactbent could merely resign without giving a reason and no one else is required to seek public employment. There was and is no publicity unless a person seeks it himself.

6. Equal Protection of the Laws is Not Denied.

In the first instance the general sedition law applicable to all is the same as the perjury section applicable to state or public employees. And in the second place a state has a right to require higher standards of public employees than of the general citizen. *Adler v. Bd. of Education,* 342 U.S. 485.

ARGUMENT
I
THE ADMINISTRATIVE DUE PROCESS IS NOT AN ISSUE

The precise question before the Court is most accurately set forth in the dissent in *Nostrand v. Little,* 362 U.S. 474 at 478:

> "A hearing under the present statute would obviously be important to a determination of the existence of 'scienter' for presecution of one who took the oath for perjury. But such a hearing is not germane to the question whether under this statute a teacher has a right to refuse to take the oath that is tendered. The command of the statute is clear: Refusal to take the oath 'on any ground' is cause for discharge. That command poses the critical issue for us. A remand for determination of whether there will be a hearing therefor seems to me a remand for an irrelevancy in the setting of this case."

The question then resolves itself into two factual situations. Some state employees have job security, among them school teachers, highway department employees, welfare, and employment security employees, either by state law or federal requirement. Many others, including assistant attorneys general, university professors, and tax commission employees have no job security. Such persons can be hired and fired at will; no reason need be shown or stated. Archaic as it may seem there is an occasional change in position based on nothing more substantial than an election. Rumor has it that this also may be true in the federal government.

The law in issue changed nothing. If there was no prior right to a hearing, the law deprived no one the right which they never had. If there was a right to a hearing, the law did not purport to change it and one would be granted.[1] The essential problem thus

[1]The same is true of other public employment. While the City of Phoenix for example has a well-organized personnel program, with internal procedures and remedies, the same is hardly true of Gila Bend or Tombstone.

remains the same. If the administrative process neither grants a new right nor denies an established right, and if it in addition is powerless to effect the status of those seeking to invoke it, of what value is a hearing The answer is that given by Mr. Justice Douglas in *Nostrand v. Little, supra*—no value at all.

All the explanations in the world, combined with all the defenses of the mind of man could conjure, would not authorize the Livestock Sanitary Board to compensate a cattle inspector who did not sign the oath or affirmation.

Similarly, no governmental agency can discharge an employee for "disloyalty". No agency has any authority to "investigate", "interrogate" or "charge" any one of their employees. The only sanction for a violation of the law is that of the criminal law, with all the substantive and procedural safeguards of the full judicial process. In addition, it must be pointed out that a public employee is no worse a situation than any other person. The sedition law of A.R.S. 13-707 is applicable to all persons within the state and is exactly the same as the perjury law applicable to public employees. A public employee could in theory be charged with either perjury or sedition, but is fully protected from double danger by the provisions of A.R.S. 13-1641.

> "An act or omission which is made punishable in different ways by different sections of the law may be punished under either but in no event under more than one. An acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other."

If we assume, however, that the constitution requires that a person or any employee has a right to explain or defend a refusal to subscribe an oath or affirmation, the petitioner has explained and defended her refusal in the very forum designed for such action. An administrative agency is ill-equipped by nature and powerless by law to do anything with such a complaint. A court, however, is designed for such a purpose and armed with the pre-

cise weapons the petitioner needs; the authority to declare a law unconstitutional entirely or inapplicable in particular.[2]

We should not let offhand statements concerning "administrative due process" becloud common sense. Administrative *due* process is only important where administrative *process* itself has any value or could result in any prejudice, substantive or procedural, to the parties involved.

Slochower v. Bd. of Education, 350 U.S. 551 has no application herein. A teacher otherwise protected by tenure statutes was discharged summarily for invoking a privilege against self-incrimination before an investigative sub-committee of the United States Senate. It was admitted that the invocation of the privilege was proper. The New York Court of Appeals held that the New York City charter provision calling for summary discharge of anyone claiming the privilege was a valid condition of employment. This Court understandably disagreed, relying principally on *Weimann v. Updegraff,* 344 U.S. 183, and distinguishing *Adler v. Bd. of Education,* 342 U.S. 485 and *Garner v. Los Angeles Bd. of Supervisors,* 341 U.S. 716. The holding stands for the reasonable proposition that a public employer may not demand that its employees be forced to waive a constitutional protection to which all persons are entitled as a condition of employment without an opportunity to explain why any such employee does not wish to waive such a constitutional right.

Here we have no question of waiver of any right or privilege whatsoever. The condition of employment is a subscription of a simple affirmative oath or affirmation. The fact that a state may legitimately inquire into the conduct of its employees and obtain from them a statement concerning their basic loyalty has been answered in *Adler v. Bd. of Education, supra,* and in numerous other cases. Even in those cases where individual state laws have fallen for vagueness, as in *Baggett v. Bullitt, supra,* and *Cramp*

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[2]Since an administrative determination would end up in court without serious doubt, the practical effect of an administrative protest would only mean more delay.

v. Bd. of Public Instruction, 368 U.S. 278 or for lack of requirement of scienter, *Weimann v. Updegraff, supra;* the basic right of a state to proceed in the area of internal security and to require such a statement has remained unchallenged.[3]

The Oath Or Affirmation Itself Is Proper

The Arizona oath or affirmation is virtually the same as that required of all federal employees under 5 U.S.C. 16.

> "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

This was originally enacted in 1884 and has been extended to various specific phases of employment now so that virtually every part of the executive branch of government is covered by the oath. As recently as 1964 a similar oath was prescribed for enrollees in the Job Corps Program provisions of the Economic Opportunities Act. See 42 U.S.C. 2714(C):

> "I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies foreign and domestic."

Every state in the United States has an oath form for civil defense workers (who may be unpaid volunteers, not regular em-

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[3]*Cramp v. Bd. of Public Instruction,* 137 So.2d 828 (Fla., 1962). On motions for entry of judgment pursuant to the mandate of the Supreme Court 368 U.S. 278, the Supreme Court of Florida held, *inter alia,* that the United States Supreme Court held unconstitutional only that portion of the loyalty oath which related to past and future lending of aid, support, advice, counsel or influence of the Communist party, and that the remainder of the statute requiring the loyalty oath, with the unconstitutional portion thereof eliminated, remained in full force and effect. This decision apparently has never been challenged.

ployees). The following language is prescribed by 50 U.S.C. App. 2255(d):

> "Each person other than a Federal employee who is appointed to serve in a State or local organization for civil defense shall before entry upon his duties take an oath in writing before a person authorized to administer oath, which oath shall be substantially as follows; '..... do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; and that I will bear true faith and allegiance to same; that I take this obligation freely, without any mental reservation or purpose of evasion; that I will well and faithfully discharge the duties upon which I am about to enter. " 'And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocate the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of the (name of civil defense organization) I will not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocate the overthrow of the Government of the United States by force or violence.' " "Any person who shall be found guilty of having falsely taken such oath shall be punished as provided in Section 1621 of Title 18."

Some forty-one states require non-elective personnel to subscribe to an oath or affirmation to support and or defend the Constition of the United States and/or their own state.

Internal Security or Subversion, a study prepared for the subcommittee to investigate the administration of the Internal Security Act and other Internal Security Laws of the Committee on the Judiciary of the United States Senate by the American law division legislative reference service, Library of Congress (committee print, Page 445, Table 18)

A similar Arizona oath has been in effect insofar as state offices are concerned since 1901. It read:

> "State of Arizona, County of ....., I ....., do solemnly swear that I will support the Constitution of the United States and the constitution and laws of the State of Arizona; and that I will bear true faith and allegiance to same, and defend them against all enemies whatever, and that I will faithfully and impartially discharge the duties of the office of (name of office) according to the best of my ability, so help me God." A.R.S. 38-231

This law was made applicable to all state employees by the provisions of A.R.S., 38-233 and to school teachers in 1935 by the provisions of A.R.S., 15-231.

To state that such a commonplace, long-standing oath or affirmation, common to millions of federal employees as well as to most state employees, constitutes a waiver of a constitutional privilege such as to require a hearing, is to fly on the face of law and reality.

II

THERE EXISTS A REASONABLE NEED FOR A REASONABLE LAW SUCH AS THIS

Petitioner claims that the law is invalid because there were no public hearings in Arizona. Respondents submit that the classic statement of Mr. Justice Fields regarding the judiciary is equally applicable to the members of the State Legislature.

> ". . . we cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men" Ho Ah Kow v. Numan, 12 Fed. Cas. 252 (No. 6546) (C.C. Cal. 1879) (Field, J. as Circuit Judge)

Arizona is still one of the United States, we trust. A large share

of upholding law and order, providing for the needs of the civilian population, and maintaining a relative stability in a critical situation, devolves upon state and local agencies. This was recognized and approved by the Court in *Uphaus v. Wyman,* 360 U.S. 72.[4] Specific hearings or findings in this area are not necessary.

The only question which would approach the serious is the extent of governmental instrusion into or a restriction upon recognized rights.

There can be no doubt, nor is it claimed, that the section of the law forbidding the act to overthrow or an act aiding in the commission of the overthrow of the government by force or violence is improper.

There can be as little doubt that "advocacy" of the overthrow of the government by force or violence is equally a permissible prohibition by a state. Petitioner attempts to create an issue which does not exist. It is states that in *Yates v. United States,* 354 U.S. 298 the Court held:

> "That the Smith Act reaches only advocacy *of action* for the overthrow of the government by force and violence." [Emphasis supplied.]

Petitioner then states that because the Arizona Statute does not contain the phrase "of action" it means even "the words in a philosophical argument". (Petitioner's Br., p. 38) However, petitioner misses the heart of the matter. The Smith Act, 18 U.S.C. 2385 does not state "of action" any more than does Arizona law. Advocacy was held by this Court in *Yates, supra,* and others to mean advocacy of action. This is a judicial and normal interpretation of the word; and was known before the act in question was passed. In addition the cases of this Court were consulted. *Journal of the Senate, Appendix B, p. 3.*

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[4]We take no serious issue with the dissent by Mr. Justice Brennan, joined in by the Chief Justice. Our concern is solely with the right and duty of local authority to deal with civil disturbances recognized in the majority opinion and in the dissent of Mr. Justice Brennan and the Chief Justice.

Of even more binding importance was the specific recognition of the cases decided by this Court in the decision of the Supreme Court of Arizona. *Elfbrandt v. Russell,* 94 Ariz. 1, 381 P.2d 554, 559. An interpretation by the Arizona Supreme Court is part of Arizona law. If this court in later cases further refines, clarifies or expands the definition of "advocacy" its action will be as binding on Arizona under our law as it would be binding on the Federal Government under the Smith Act.

The other area of possible restriction is the prohibition of membership in organizations where the member knows that one of the purposes of the organization is to overthrow the government by force or violence. Respondents submit that the decision of this Court in *Scales v. United States,* 367 U.S. 203 (another of the cases specifically mentioned in the Arizona decision) is clear authority for and a binding interpretation of the meaning of "membership".[5] The Supreme Court of Arizona frankly admitted that there was some limitation on the activities of individuals:

> "We recognize the prohibited conduct in denying membership in the enumerated organizations diminishes the individual's freedom of association and hence the unfettered communication of ideas, but whatever test be applied, the constitutional restraints are satisfied. The conduct sacrificed to governmental interests minimally and incidentally conflicts with the First Amendment. The gravity and evil sought to be reached, discounted by its improbability, justifies the invasion." 94 Ariz. 1, 10, 381 P.2d 554, 560.

But even if one distrusts the gravity-discount theory of approaching the First Amendment, so ably and clearly set forth by the Honorable Learned Hand the result should be the same.

It has been suggested that the proper approach is that of Alexander Meiklejohn. In a recent article in 79 Harv.L.Rev. 1, pp.

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[5]Fortunately we are not faced with (and since *Albertson v. Subversive Activity Control Bd.,* No. 3 October Term 1965 cannot be faced with) the question of implied repeal or immunity which form the basis of the dissent of Mr. Justice Brennan and the Chief Justice.

1-20, Mr. Justice Brennan outlined Professor Meiklejohn's positions and included this statement of them.

> "He found no fault with laws and ordinances that required the speaker to conform to the necessities of the community with respect to time, place, circumstances and the matter of procedure, as long as they were not mere cover for attempts to suppress speech he classified as having governing importance." *Supra* at 13.

On the subject of governing importance Professor Meiklejohn is quoted as saying:

> "Public discussions of public issues, together with the spreading of information and opinion bearing on those issues, must have a freedom unabridged by our agents [the government]."[6]

But what is a "public discussion of a public issue". We know that shouting "fire" in a crowded theater is not. The respondents believe that the type of "communication" described at length in *Scales, supra* is not. In that case there was a thorough and detailed record of the training given to prospective communist members. Everything was dedicated to violence or sabotage. The basis was rigid discipline and obedience. There was about as much discussion (not to mention public discussion) as there is between a company commander in Viet Nam ordering his squad to silence a mortar position.

In short the communications are one who advocates the overthrow of government by force or violence made to one who is knowingly or actively a member of such an organization so dedicated is akin to obscenity and libel;[7] not of governing import-

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[6]The quotation is from The First Amendment is an Absolute, 1961 S.Ct. Rev. 245, 257 (Kurland ed.)

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[7]Two areas in which Professor Meikeljohn agreed that the governing of social importance was not sufficient to bar punishmnet. See 79 Harv. L. Rev. 1-20, *supra.*

ance and under proper circumstances a valid subject of state action. So *Scales, supra* held; so we urge this Court to hold.

III

THERE IS NO VICE OF VAGUENESS IN THE BILL

Petitioner states that by comparing the Washington law, Rev. Code Wash. Anno. 9.81.020 with the Arizona law, A.R.S. 13-707 (or 38-231 E), we will see "that the Arizona statute and the Washington statute are quite similar." (Petitioner's Brief, p. 7) Petitioner reaches this conclusion by quoting a portion of each statute "by omitting some of the alternatives".

It was precisely the portions "omitted" by petitioner from the Washington law which were found by this Court to be vague in *Baggett v. Bullitt*, 377 U.S. 360. Those same portions form no part of an Arizona law. The statutes are simply not the same. And where the criticized portion of one law is not to be found in the other law the criticism must fail, not the law. Let us turn to the decision itself. The language of Mr. Justice White is clear:

> "Persons required to swear they understand this oath might reasonably conclude that any person who *aids* the Communist Party, or *teaches* or *advises* known members of the Party is a subversive person because such *teaching* or *advcie* may now or at some future date aid the activities of the Party." 377 U.. 360, 367, 368. [Emphasis supplied.]

The first distinction is that under Washington law a person signing the oath states that he has read the law and that he is familiar with the contents thereof. (See Note 4, *Baggett v. Bullitt, supra,* at 377 U.S. 365.) Arizona law contains no such provision and the perjury section can only be violated by an act prohibited under it, the same act applicable to all persons under the sedition law. A.R.S. 13-707.

The second distinction is that the words and phrases singled out as vague or "aid" "advise", "teach" or "advice" and "teach-

ing". None of these words appear in the Arizona law.[8]

The distinction is even clearer in the comparison of the Washington law with the Smith Act. Rev. Code Wash. Anno. 9.81.020 (2) reads:

> "*Advocate, abet, advise* or *teach* by any *means* any person to commit, or assist in the commission of any act under such circumstances as to constitute a clear and present danger to the security of the United States or the State of Washington or of any political subdivision of either of them."

The Smith Act, 18 U.S.C. 2385 states:

> "Whoever knowingly or willingly advocates, abets, advises or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any state . . . by force or violence".

The Washington law would require a person to know the "circumstances" which might in the mind of the recipient of the "advice" or "teaching" be a "clear and present danger". Hence Mr. Justice White's understandable concern. The Smith Act, however, as interpreted by *Dennis v. United States,* 341 U.S. 494 transforms such possibly vague words as "abets, advises or teaches" into "teaching and advocacy of acts". 341 U.S. 511, 512. The Arizona law is even clearer by avoiding all possible ambiguity and retaining only "advocates the overthrow by force or violence". There is no need to worry about "aid, advises or teaches". No concern over a potential but perhaps unknown "clear or present danger". Arizona goes to the heart of the matter; something that this Court has done for other legislative draftsmen in the past, but which respondents feel is not even necessary here.

In addition, the very questions which Mr. Justice White posed

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[8] "Aid" does appear in the phrase "aid in the commission of an act to overthrow by force or violence" but is clearly limited therein to an actual accessory, i.e., to a person with a specific intent in fact to accomplish the forbidden. *Elbrandt v. Russell,* 97 Ariz. 416, 379 P.2d 948.

in *Bagget v. Bullitt, supra,* were answered in the negative in *Elfbrandt v. Russell,* 97 Ariz. 146, 147, 377 P.2d 948. The Supreme Court of Arizona, charged with the interpretation of Arizona law as this Court is charged with the interpretation of federal law, has set the limits and prescribed the bounds. Petitioner may not unloose them now.

Petitioner finds some difficulty with the words "knowingly" and "wilfully". Since these words are part and parcel of any and every criminal law; are all crimes to be beyond statutory definition? We fail to follow petitioner's reasoning.

The question of "becoming" or "remaining" a member is also raised. Only a specific organization involved can set the terms of "membership" and since we are bound to read into our law the definition of membership contained in *Scales v. United States,* 367 U.S. 203, the question of membership becomes a question of fact, not of interpretation. No similar objection was sustained in *Scales, supra,* in which the statute involved also used the word "membership". 18 U.S.C. 2385.

IV

THE LEGISLATION IS NOT A BILL OF ATTAINDER

The most recent pronouncement and a thorough summary of the law in this area is contained in *United States v. Brown,* 381 U.S. 437. The principal distinction between that case and this lies in the fact that under the law involved therein, (29 U.S.C. 504) a person who was or *who had been* for five years prior to the enactment of the Act and was also a union officer was guilty of a crime. Under Arizona law no past conduct is in issue, only conduct after the effective date of the law (90 days after enactment). As the Chief Justice pointed out, an official who had been a Communist within five years (but who now might not be) "was given the choice of declining a leadership position in his union or in incurring criminal liability" 381 U.S. 452.

The decision specifically went on to distinguish *American Communications Assn. v. Douds*, 339 U.S. 382, which upheld Section 9(8) of the Taft Hartley Act. (29 U.S.C. 159) (h) (now repealed) and which also had a non-communist provision; in the following language:

> "The Court in Douds focused upon the fact that members of the Communist Party could escape from a class of persons specified by Congress simply by resigning from the Party:
>
> > 'Here the intention is to forestall future dangerous acts; there is no one who may not, by a voluntary alteration of the loyalties which impel him to action, become eligible to sign the affidavit. We cannot conclude that this action is a bill of attainder' ". 381 U.S. 458

The precise distinction therein drawn lies herein. Arizona law makes no mention of past acts and cannot remotely be deemed to be based on a principal of retaliation or proscription.

V

THE FIFTH AMENDMENT IS NOT INVOLVED

Respondents have some difficulty in finding, not to speak of following, petitioner's argument concerning the Fifth Amendment to the Constitution of the United States. It is apparently set forth in two paragraphs on page 35 of the petitioner's brief. It simply does not make sense. No one is or was held to publicly refuse to take an oath or affirmation of allegiance. Employees at the time when the law was passed had ninety days to resign quietly if their sensibilities were offended. As Appendix C shows there was and always will be a constant turnover in state and public employment. Many persons leave simply for better pay. No reason need be given. Similarly no one is impelled to become a public employee or state that a personal dislike of an oath is a reason not to accept a job. There is no "court of public opinion" unless the

person so resigning or so refusing to become employed voluntarily refuses to make a public issue of the matter. The argument is without weight.

VI

THE FOURTEENTH AMENDMENT IS NOT INVOLVED

As we have pointed out elsewhere the activity forbidden state and public employees are likewise forbidden to all persons under the provisions of the sedition law. A.R.S. 13-707. A public employee would lose his job, a private citizen would be barred from public employment. A.R.S. 13-707.01. There is no significant distinction. The head of a public utility *is* under the same onus as a public employee. In addition, cases too numerous to cite have held that public employees, because of the nature of their position, can be held to a higher standard than citizens in general. *Eg. Adler v. Bd. of Education,* 342 U.S. 485.

VII

MATTERS NOT PROPERLY BEFORE THE COURT

As hereinbefore noted the petitioner states that the legislation has had a "devastating effect" on public employees. There is not one iota of evidence to support this. No university professors were asked to testify, no standard and recognized authority was presented to the trial court, no evidence was solicited. (Perhaps because such evidence would have been subjected to cross-examination, impeachment, rebuttal or other standard procedures to arrive at the truth.)

Petitioner is hoist on her own petard in citing the National Defense Education Act of 1958, 29 U.S.C. § 581. True that negative disclaimer oath was eliminated in 1962 by P.L. 87-835, but the affirmative oath of allegiance was left in. This oath (excepting only inapplicable provisions relative to the discharge of the duties

of office), is virtually the same as the Arizona oath. If there has been any outcry to the oath that is still part of the National Defense Education Act, none is cited. The Congress in 1962 did exactly what the Arizona legislature anticipated in 1961. The report of the Senate Judiciary Committee is wryly accurate.

> "It is a sign of hysteria and an indication of that very distrust of the United States, which the communists seek to foment, when each State seeks to devise some special oath of allegiance which is supposed to divide the communist from the loyal citizen. The communist trained in fraud and perjury has no qualms in taking any oath; the loyal citizen, conscience of history's oppressions, may well wonder whether the medieval rack and torture wheel are next for the one who declines to take an involved negative oath as evidence that he is a True Believer. Loyalty to a free society is a matter of fact; nor are there degrees of loyalty to human freedom which are in direct proportion to ingenuity, length and loudness of the loyalty oath."

PEACEABLE ASSEMBLY

Petitioner makes further reference to picketing at the State Capitol during the deliberations of the law in issue. Aside from the constitutional code of the right of people "peacefully to assemble, and to petition the Government for a redress of grievances" are we to invalidate a law because of such activity. If so, one would be forced to mourn the resulting death of both federal and state (including Arizona, A.R.S. 41-1401-1485), Civil Rights acts as their passage was often accompanied by picketing approaching even violence in some instances. When we like a law, a mature legislature has harkened to the needs and desires of the public and answered their reasonable and just requests. When we don't like a law, a timid legislature has bowed to hysteria.

CONCLUSION

Since 1884 every employee of the executive branch of the United States Government has been required to subscribe to a virtually identical oath of allegiance, 5 U.S.C. 16. Since 1901 all Arizona state offices, deputies, clerks, assistants and subordinates have been required to subscribe to a virtually identical oath or affirmation, and all teachers in common school districts of the state have been under that requirement since 1935.

All persons in the state, public employees or not, have been subject to the provisions of the Smith Act since 1940.

The statute in question creates three clearly permissible areas of state action. The Legislature of the State of Arizona has carefully avoided ambiguity and the Supreme Court of Arizona has confirmed this care. The statute provides only for a simple affirmative oath of allegiance to the person who employs you and does not provide for a disclaimer oath beclouded with "ingenuity, length and loudness".

The rights and obligations of educators and scholars are not only protected but encouraged. The Arizona Legislature should not be condemned but should be congratulated for its care and maturity of approach.

The State of Arizona does not come before this Court as a whining supplicant begging for grace or favor. We appear as a sovereign with a proud standard expecting and entitled to respect and honor.

Respectfully submitted,
DARRELL F. SMITH
The Attorney General

PHILIP M. HAGGERTY
Special Counsel to the
Attorney General

APPENDIX A

Chapter 108, House Bill No. 115

An Act

RELATING TO CRIMES; TO THE PROTECTION OF THE SAFETY OF THE STATE OF ARIZONA AND THE FUNDAMENTAL LIBERTIES OF ITS CITIZENS FROM THE INTERNATIONAL COMMUNIST CONSPIRACY; PROSCRIPTION OF THE COMMUNIST PARTY IN ARIZONA; DEFINING THE CRIME OF SEDITION; REQUIRING LOYALTY OATHS BY PUBLIC OFFICERS AND EMPLOYEES; PRESCRIBING PENALTIES; AMENDING TITLE 16, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 16-205 AND 16-206; AMENDING TITLE 13, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 40.1, SECTIONS 13-707 AND 13-707.01, AND AMENDING SECTIONS 38-231 AND 38-233, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. This act may be cited as the Arizona Communist Control Act of 1961.

Sec. 2. Title 16, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 16-205, to read:

16-205. FINDINGS OF FACT AND STATEMENT OF PUBLIC POLICY BY THE LEGISLATURE OF THE STATE OF ARIZONA CONCERNING STEPS WHICH MUST BE TAKEN TO PROTECT THE FUNDAMENTAL RIGHTS OF THE CITIZENS OF THIS STATE AND THE SAFETY OF THIS STATE FROM INTERNATIONAL COMMUNISTIC CONSPIRACY

A. Upon evidence and proof which has been presented before this Legislature, other State Legislatures, the Congress of the

United States and in the courts of the United States and in the courts of the several states; and although recognizing that the federal constitution vests the conduct of foreign relations in the federal government and the federal constitution guarantees to the several states a republican form of government and protection against foreign invasion and domestic violence, this state has the duty of self-preservation and the taking of necessary measures to cooperate with the federal government in the preservation of the peace and safety of the State of Arizona and in order to carry out article 2, section 21 of the Arizona Constitution relating to free and equal elections and article 7, section 12 of the Arizona Constitution relating to the enactment of laws to secure the purity of elections; and in order to guard against the abuse of the elective franchise by the Communist Party of the United States which from time to time has qualified as a purported legitimate political party in the State of Arizona; and in order to secure to the citizens of this State their unalienable personal rights and liberty of conscience secured by the provisions of the Constitution of Arizona and in order to protect the peace and safety of the State of Arizona from the overthrow of its constitutional government by force or violence, and of its political subdivisions, the Legislature of the State of Arizona finds and declares that, unlike other political parties which have evolved their policy and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are prescribed for it by the foreign leaders of the world Communist movement.

B. The Communist Party members have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike legitimate political parties,

the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its members, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional government of the United States, the governments of the several states, and the government of the State of Arizona and its political subdivision ultimately must be brought to ruin by any available means, including resort to force and violence.

C. The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and said totalitarian dictatorship ruthlessly suppresses academic freedom and inquiry into any human knowledge except the official doctrines of the dictatorship. This results in the maintenance of control over the people through fear, terrorism, and brutality.

D. It is the public policy of this state to protect the safety of the constitutional government of the State of Arizona by constitutional means and at the same time protect the rights of the members of our free society to speak, to assemble and to inquire, including the principle of academic freedom which by fostering healthy self-criticism is especially vital in the progress of man's moral values and in man's exploration of the secrets of the atom on this planet and in outer space. To protect the safety of this state and the right of free citizens in a free society to inquire and to understand totalitarianism, it is essential that the schools, colleges and universities teach objectively and critically the governmental and social forms of past and present totalitarian slave states,

including the foreign languages spoken therein.

The rights set forth in this subsection do not include the right to embrace Communism or to attempt to persuade others to embrace Communism.

E. The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

F. The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of a world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

G. The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force or violence if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a legitimate political party which operates as an agency by which the people govern themselves.

H. In the United States and in this state those individuals who knowingly and wilfully participate in the world Communistic movement, when they so participate, in effect repudiate their allegiance to the United States and this state, and in effect transfer

their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

I. The Communist movement in the several states is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance at a moment when the several states may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States and of the several states by force or violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries, including the recent events in the neighboring country of Cuba, have aided in supplanting existing governments. The Communist organization in the United States and in the several states, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the government of the United States, the governments of the several states, and the government of the State of Arizona, including its political subdivisions, that make it necessary that the State of Arizona enact appropriate legislation, recognizing the existence of such world-wide Communist conspiracy, and designed to prevent it from accomplishing its purposes in this State and its political subdivisions. Therefore, the Communist Party should not be permitted to avail itself of the privileges, rights and immunities conferred by law upon legitimate political parties.

Sec. 3. Title 16, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 16-206, to read:

16-206. PROSCRIPTION OF COMMUNIST PARTY OF UNITED STATES, ITS SUCCESSORS, AND SUBSIDIARY ORGANIZATIONS

The Communist Party of the United States, or any successors of such party regardless of the assumed name, the object of which

is to overthrow by force or violence the government of the United States, or the government of the State of Arizona, or its political subdivisions shall not be entitled to be recognized or certified as a political party under the laws of the State of Arizona and shall not be entitled to any of the privileges, rights or immunities attendant upon legal political bodies recognized under the laws of the State of Arizona, or any political subdivision thereof; whatever rights, privileges or immunities shall have heretofore been granted to said Communist Party of the United States as defined in this section, or to any of its subsidiary organizations, by reason of the laws of the State of Arizona, or of any political subdivision thereof, are hereby terminated and shall be void.

Sec. 4. Title 13, chapter 2, Arizona Revised Statutes, is amended by adding article 40.1, sections 13-707 and 13-707.01, to read:

ARTICLE 40.1 SEDITION

13-707. DEFINITION OF SEDITION; PARTIES; PUNISHMENT

A. A person who knowingly or wilfully commits, or aids in the commission of any act to overthrow by force or violence the government of this state, or of any of its political subdivisions, is guilty of sedition against the State of Arizona.

B. A person who knowingly or wilfully advocates the overthrow by force or violence the government of this state, or of any of its political subdivisions, is guilty of sedition against the State of Arizona.

C. A person who knowingly or wilfully becomes or remains a member of the Communist Party of the United States, or itssuccessors, or any of its subordinate organizations, or any other organization having for one of its purposes the overthrow by force or violence of the government of the State of Arizona, or any of its political subdivisions, and said person had knowledge of said unlawful purpose of said Communist Party of the United States

or of said subordinate or other organization, is guilty of sedition against the state.

D. Any person who violates any provisions of this article is guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than twenty thousand dollars, or imprisonment in the state prison for not more than twenty years, or both.

13-707.01. DISQUALIFICATION TO HOLD OFFICE

Any person who is convicted of violating any provision of this article shall automatically be disqualified and barred from holding any office, elective or appointive, or any position of trust, profit or employment with this state, or any political subdivision of this state, or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission or agency of any of the foregoing.

Sec. 5. Sec. 38-231, Arizona Revised Statutes, is amended to read:

38-231. OFFICERS AND EMPLOYEES REQUIRED TO TAKE LOYALTY OATH; FORM; PENALTY

A. In order to insure the statewide application of this section on a uniform basis, each board, commission, agency, and independent office of the state, and of any of its political subdivisions, and of any county, city, town, municipal corporation, school district, and public educational institution, shall immediately upon the effective date of this act completely reproduce section 38-231 as set forth herein, to the end that the form of written oath or affirmation required herein shall contain all of the provisions of said section for use by all officers and employees of all boards, commissions, agencies and independent offices.

B. For the purposes of this section, the term officer or employee means any person elected, appointed, or employed, either on a part-time or full-time basis, by the state, or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution, or any board, com-

mission or agency of any of the foregoing.

C. Any officer or employee elected, appointed, or employed prior to the effective date of this act shall not later than ninety days after the effective date of this act take and subscribe the form of oath or affirmation set forth in this section.

D. Any officer or employee within the meaning of this section who fails to take and subscribe the oath or affirmation provided by this section within the time limits prescribed by this section shall not be entitled to any compensation unless and until such officer or employee does so take and subscribe to the form of oath or affirmation set forth in this section.

E. Any officer or employee as defined in this section having taken the form of oath or affirmation prescribed by this section, and knowingly or wilfully at the time of subscribing the oath or affirmation, or at any time thereafter during his term of office or employment, does commit or aid in the commission of any act to overthrow by force or violence the government of this state or of any of its political subdivisions, or advocates the overthrow by force or iolence of the government of this state or of any of its political subdivisions, or during such term of office or employment knowingly and wilfully becomes or remains a member of the communist party of the United States or its successors or any of its subordinate organizations or any other organization having for one of its purposes the overthrow by force or violence of the government of the state of Arizona or any of its political subdivisions, and said officer or employee as defined in this section prior to becoming or remaining a member of such organization or organizations had knowledge of said unlawful purpose of said organization or organizations, shall be guilty of a felony and upon conviction thereof shall be subject to all the penalties for perjury; in addition, upon conviction under this section, the officer or employee shall be deemed discharged from said office or employment and shall not be entitled to any additional compensation or any other emoluments or benefits which may have been incident or appurtenant to said office or employment.

F. Any of the persons referred to in Article XVIII, Section 10 of the Arizona Constitution as amended, related to the employment of aliens, shall be exempted from any compliance with the provisions of this section.

G. In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of his office or employment, he shall take and subscribe the following oath or affirmation:

State of Arizona, County of .....

I, ... do solemnly swear (or
(type or print name)
affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of .... (name of office) ..... according to the best of my ability, so help me God (or so I do affirm).

.....
(signature of officer or employee)

Sec. 6. Sec. 38-233, Arizona Revised Statutes, is amended to read:

38-233. FILING OATHS OF RECORD

A. The official oaths of state elective officers shall be filed of record in the office of the secretary of state. The official oaths of all other state officers and employees shall be filed of record in the office of the employing state board, commission or agency.

B. The official oaths of notaries public and of elective county and elective precinct officers shall be filed of record in the office of the county recorder, except the oath of the recorder, which shall be filed with the clerk of the board of supervisors. The official oaths of all other county and precinct officers and employees

shall be filed of record in the office of the employing county or precinct board, commission or agency.

C. The official oaths of all city, town or municipal corporation officers or employees shall be led of record in the respective office of the employing board, commission or agency of the cities, towns and municipal corporations.

D. The official oaths of all officers and employees of all school districts shall be filed of record in the office of the superintendent of public instruction.

E. The official oaths of all officers and employees of each public educational institution except school districts shall be filed of record in the respective offices of said public educational institutions.

F. The official oath or affirmation required to be filed of record shall be maintained as a permanent official record.

Sec. 7. SAVING CLAUSE

This act does not apply to any offense committed prior to the effective date of this act, and any such offense is punishable as provided by the statute in force at the time the offense was committed.

Sec. 8. SEVERABILITY

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 9. EMERGENCY

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

APPENDIX B

Report of the Judiciary Committee in Support of the Committee Amendment to H.B. 115, *Journal of the Senate,* 1st Reg. Sess., 25th Legislature of the State of Arizona (1961), pp. 423-425:

"A free society must be dedicated to the protection of the individual from governmental oppression. The American dream is that these rights inhere in any man. They are not revocable privileges bestowed by governments, either totalitarian or free. These human rights are unalienable. Among the most precious are the freedom to speak, to assemble, to organize political parties, to vote for governmental representatives, and to petition these elected officers.

"These rights in the schools become the principle of academic freedom which fosters self-criticism and intellectual skepticism—qualities vital to the pursuit of truth. This freedom to learn how to think objectively is especially important in man's exploration of the secrets of the atom on this planet and in outer space.

"These liberties withstood the test of repeated attacks by German and Japanese totalitarianism. Now, these same liberties are under attack by a Russian Imperialism likewise intent on world domination by external force, internal incitement to violence, fraud, espionage and fifth column treachery. The Communist Party in this Country must be recognized as an instrument of a foreign power and as part and parcel of an international scheme to destroy unalienable human rights by substituting a world wide communistic dictatorship subservient to foreigners.

"The totalitarian enemy is skilled in the formenting of confusion and panic with resulting insecurity and distrust. Citizens of a free society then begin to wonder whether that free society whose citizens have unalienable rights to speak critically can compete successfully with the totalitarian society consisting wholly of conforming, silent slave citizens ruled by a ruthless autocracy.

"National security demands effective action against any group

of citizens, communist or otherwise, whose basic loyalty is to a form of foreign totalitarian domination which seeks to destroy the immemorial rights of the citizens of a free society. America must keep devising remedial measures sufficient in scope and strength to deal adequately with the evil of communist statism. However, it would be ironically tragic if, in the process of fighting totalitarianism, we undermined the very principles of human dignity and freedom which the communist seeks to destroy.

"The fight against international communism must be on a national scale because the Constitution has delegated exclusive management of foreign affairs to the Federal Government. The Executive and Legislative Branches of that government must give effective leadership through the Federal Bureau of Investigation and the Central Intelligence Agency, to the several States and their citizens as to how best to preserve and protect the human rights to Life, Liberty and the Pursuit of Happiness proclaimed by the Declaration of Independence and guaranteed by the Federal Constitution.

"It is a sign of hysteria and an indication of that very distrust of the United States, which the communist seeks to foment, when each State seeks to devise some special oath of allegiance which is supposed to divide the communist from the loyal citizen. The communist trained in fraud and perjury has no qualms in taking any oath; the loyal citizen, conscious of history's oppressions, may well wonder whether the medieval rack and torture wheel are next for the one who declines to take an involved negative oath as evidence that he is a True Believer. Loyalty to a free society is a matter of fact; nor are there degrees of loyalty to human freedoms which are in direct proportion to ingenuity, length and loudness of the loyalty oath. In fact, a communist commits perjury in taking the simplest affirmative oath to support the Constitutions of the United States and that of Arizona.

"Accordingly, your committee reports and recommends for passage H.B. 115 as amended by this committee. The proposed amendment outlaws the Communist Party in Arizona, defines

the crime of sedition, requires an affirmative loyalty oath from all state and local officers and employees, and provides, in effect, that any person signing such an oath who is a member of the Communist Party or any organization committed to overthrow by force or violence of our constitutional government shall be punished as if he had committed perjury. No attempt has been made to include special provisions for forfeiture of property or for special searches and seizures. These matters are already covered by existing law or raise serious constitutional questions which might invalidate the entire act.

"Section 5 paragraph F of the bill as amended by the Committee exempts from the loyalty oath those persons referred to in Article XVIII, Section 10 of the Arizona Constitution as amended. This exemption relates wholly to the working of alien prisoners on work gangs and the employment of aliens under the teacher exchange program authorized by the Congress of the United States. The federal statute is to be found in Title 22, USCA, 'Foreign Relations and Intercourse', Section 1446. This Section provides in part as follows: '* * * a person admitted under this section * * * who engages in activities of a political nature detrimental to the interests of the United States, or in activities not consistent with the security of the United States, shall, upon the warrant of the Attorney General, be taken into custody and promptly deported pursuant to sections 1251-1253 of Title 8 * * *'. In any event, it would be improper to request a French or German national who had been cleared to teach temporarily in the United States to take a loyalty oath to the United States. If he did, he might lose his native citizenship just as an American visiting teacher abroad might lose his American citizenship if he took a loyalty oath to a foreign country.

"An attempt has been made to objectively study the several federal and state statutes relating to the Communist Party, sedition, and loyalty oaths as well as the various federal and state court decisions (usually thinly divided opinions), interpreting the constitutional questions involved. Based upon the foregoing, the com-

mittee amendment plainly recognizes the international communist menace, devises remedial measures on a state level to meet it, and yet does not unduly restrict the very liberties of a free citizen in a free society which communist statism would destroy."

APPENDIX C

Feb. 23 '62
(Stamp)
ATTORNEY GENERAL
STATE OF ARIZONA

Hon. Robert W. Pickrell
The Attorney General
State of Arizona
State Capitol Building
Phoenix, Arizona

February 16, 1962

Dear Mr. Pickrell:

As the Director of personnel of the City of Phoenix, I hereby certify to your office the number of employees employed by the City of Phoenix during the past two (2) fiscal years and the number of employees who have left employment during the same periods. It is to be noted that this list does not include part-time workers (mostly help in the City Parks), but does include all City employees including police and fire department personnel. For the fiscal year commencing July 1, 1959 and ending June 30, 1960, the average number of employees employed by the City of Phoenix was 2,764. During the same period 375 employees left the service of the City of Phoenix. For the fiscal year commencing July 1, 1960 and ending June 30, 1961 the average number of employees employed by the City of Phoenix was 3,295. During the same period of time 325 employees left the employ of the City of Phoenix.

Very truly yours,
/s/LEROY J. BRENNEMAN
Personnel Director

(SEAL)
/s/M. B. BARTLETT
ATTEST:
Notary Public 2-21-62
My Commission Expires Sept. 27, 1962
(SEAL)

C2

ARIZONA STATE RETIREMENT SYSTEM
PHOENIX 30, ARIZONA

Feb. 26 '62
(STAMP)
ATTORNEY GENERAL
STATE OF ARIZONA

February 19, 1962

Honorable Robert W. Pickrell
The Attorney General
State of Arizona
State Capitol Building
Phoenix, Arizona

Dear Mr. Pickrell:

This letter summarizes records of the Retirement System for the past two years, reporting how many employees are employed in those public offices covered by the State Retirement System and how many employees leave the System each fiscal year.

These records reflect the number of persons who withdraw money from the Retirement System. If they later became employed with another public body, this would not be reflected in our statistics. This record does not show the people who actually left, but merely those who withdrew their retirement funds. Some persons leave these funds in for varying lengths of time and then withdraw them. These figures show the number who withdrew funds.

These statistics exclude persons who have died during the course of the year and the funds were paid to their beneficiary, and also exclude those who have actually retired and are drawing retirement benefits. The list also does not include members of any municipal fire department or state or county judiciary retirement system.

We enclose copies of the Annual Reports for the Retirement System, one for the fiscal year ending June 30, 1960 and the second for the fiscal year ending June 30, 1961. Note from the report on the page headed "Arizona State Retirement System

Membership" that we list all political subdivisions who had then established State System membership for their personnel. Note also such membership supplements the membership entitlement granted by the Legislature to all state employees, including the Universities and the State College and certificated school personnel. Names preceded by asterisks note that membership was established as of July 1, 1960 as noted in the report for the fiscal year ending on that date, and that an asterisk precedes a subdivision establishing membership July 1, 1961, as noted in the report issued on that date. Such membership data typically does not include the employee with less than 90 days' service and note that the number of retired members are separately stated.

For the fiscal year concluding June 30, 1960, 4,257 former employees had concluded employment with the state, a school system or a covered political subdivision and withdrew their funds from, and cancelled their membership in, the Arizona State Retirement System. For the fiscal year concluding June 30, 1961, 4,311 former employees had concluded employment with the state, a school system or a covered political subdivision and withdrew their funds from, and cancelled their membership in, the Arizona State Retirement System.

Sincerely,
/s/WAYNE R. GIBSON
Wayne R. Gibson
Director

ATTEST:
/s/CAROL L. DUFF
My Commission Expires Aug. 22, 1965
(SEAL)
Subscribed and sworn to before me this 19th day of February, 1962.

ARIZONA STATE RETIREMENT MEMBERSHIP
1959-1960

All State Employees—including the Universities and College 10,736

School Employees—all teachers in Arizona and the non-teaching employees of the following schools:.... 16,039

Cochise County
- Bisbee Schools
- Douglas Schools
- Wilcox Schools

Coconino County
- Flagstaff Schools
- Williams Schools

Gila County
- Globe Schools
- Miami Schools

Graham County
- Eastern Arizona Junior College

Greenlee County
- Clifton Schools

Maricopa County
- Arlington No. 47
- Alhambra No. 68
- Buckeye Union H. S.
- Cartwright No. 83
- Creighton No. 14
- Fowler No. 45
- Glendale No. 40
- Glendale Union H.S.
- Isaac No. 5
- Liberty No. 25
- Litchfield No. 79
- Madison No. 38
- Paradise Valley Schools
- Phoenix No. 1
- Phoenix Union H. S.
- Riverside No. 2
- Roosevelt No. 66
- Scottsdale Schools
- Tempe Union H. S.
- Washington No. 6
- Wickenburg Schools

Navajo County
- Winslow Schools

Pima County
- Amphitheater Schools
- Marana Schools
- Sahuarita Schools
- Sunnyside Schools
- Tucson Schools

Pinal County
- Casa Grande No. 4
- Stanfield Schools
- Toltec No. 22

Yavapai County
- Prescott Schools
- Verde No. 3

Yuma County
- Yuma No. 1
- Yuma Union H.S. 6,763

Political Subdivisions
- County Employees
  - Cochise
  - Coconino
  - Graham
  - Greenlee
  - Maricopa
  - Mohave
  - Pima
  - Pinal
  - Santa Cruz
  - Yavapai
- City and Town Employees
  - Avondale
  - Chandler
  - Casa Grande
  - Douglas
  - Flagstaff
  - Gilbert
  - Glendale
  - Goodyear
  - Kingman
  - Mesa
  - Prescott
  - Tempe
  - Tolleson
  - Williams
  - Yuma

Flagstaff Housing Authority
Maricopa County Water Conservation District
Pima County Sanitary District

Total Active Members 33,538

Inactive — one year 1,948

Total member accounts 35,486

Retired Members 1,097

/s/WAYNE R. GIBSON
Wayne R. Gibson
Director

ATTEST:
/s/CAROL L. DUFF
(SEAL)
My Commission Expires Aug. 22, 1965

ARIZONA STATE RETIREMENT MEMBERSHIP
1960-1961

All State Employees—including the Universities and College 11,526

School Employees—all teachers in Arizona and the non-teaching employees of the following schools 18,014

Cochise County
- Benson Schools
- Bisbee Schools
- Douglas Schools
- Wilcox Schools

Coconino County
- Flagstaff Schools
- Grand Canyon Schools
- Williams Schools

Gila County
- Globe Schools
- Miami Schools

Graham County
- Eastern Arizona Junior College

Greenlee County
- Clifton Schools

Maricopa County
- Arlington No. 47
- Alhambra No. 68
- Avondale No. 44
- Buckeye Union H.S.
- Cartwright No. 83
- Creighton No. 14
- Fowler No. 45
- Glendale No. 40
- Glendale Union H.S.
- Isaac No. 5
- Liberty No. 25
- Litchfield No. 79
- Madison No. 38
- Paradise Valley Schools
- Phoenix No. 1
- Phoenix Union H.S.
- Riverside No. 2
- Roosevelt No. 66
- Scottsdale Schools
- Sierra Vista No. 97
- Tempe Union H.S.
- Washington No. 6
- Wickenburg Schools

Navajo County
- Winslow Schools

Pima County
- Amphitheater Schools
- Marana Schools
- Sunnyside Schools
- Tanque Verde No. 13
- Sahuarita Schools
- Tucson Schools

Pinal County
- Casa Grande No. 4
- Mammoth-San Manuel Schools
- Stanfield Schools
- Toltec No. 22

Yavapai County
Bagdad Schools
Mingus Union H.S.
Prescott Schools
Verde No. 3

Yuma County
Yuma Union H.S. 7,008

Political Subdivisions
County Employees
Cochise
Coconino
Graham
Greenlee
Maricopa
Mohave
Navajo
Pima
Pinal
Santa Cruz
Yavapai
Yuma

City and Town Employees
Avondale
Chandler
Casa Grande
Douglas
Flagstaff
Gilbert
Glendale
Goodyear
Kingman
Mesa
Prescott
Safford
Scottsdale
Tempe
Tolleson
Williams
Yuma

Flagstaff Housing Authority
Flood Control District of Maricopa County
Maricopa County Waetr Conservation District
Pima County Sanitary District

Total Active Members	36,548
Inactive—one year	1,166
Total Member Accounts	37,714
Retired Members	1,283
Total	38,997

/s/WAYNE R. GIBSON
Wayne R. Gibson
Director

ATTEST:
/s/CAROL L. DUFF
(SEAL)
My Commission Expires Aug. 22, 1965

C10

ATTORNEY GENERAL
STATE OF ARIZONA

November 10, 1965

Dear Mr. Haggerty:

As requested by your letter of October 21, I am enclosing membership statistics for members covered by the Arizona State Retirement System for the fiscal years ending June 30, 1962, through June 30, 1965. This information is presented in the same manner as it was in our previous letter of February 19, 1962. The employees withdrawing funds from the State Retirement System for the same fiscal years are as follows:

June 30, 1962.....5,327
June 30, 1963.....6,132
June 30, 1964.....7,722
June 30, 1965.....8,710

If we can be of any further help, please do not hesitate to contact our office.

Sincerely yours,

JOHN D. JACOBS

John D. Jacobs
Assistant Director

JDJ-vw
Enclosures

ARIZONA STATE RETIREMENT MEMBERSHIP

All State Employees - including the Universities and College	11,635
School Employees - all teachers in Arizona and the non-teaching employees of the following schools:	19,032

Apache County
- *McNary #23

Cochise County
- Benson Schools
- Bisbee Schools
- Douglas Schools
- *Tombstone Schools
- Willcox Schools

Coconino County
- Flagstaff Schools
- Grand Canyon Schools
- Main Consolidated Schools
- Page Schools
- Tuba City Schools
- Williams Schools

Gila County
- Globe Schools
- Miami Schools

Graham County
- Eastern Arizona Junior College

Greenlee County
- Clifton Schools
- Morenci Schools

Maricopa County
- Agua Fria Union H. S.
- Arlington #47
- Alhambra #68
- Avondale #44
- *Buckeye #33
- Buckeye Union H. S.
- Cartwright #83
- Chandler Schools
- Creighton #14
- Dysart Schools
- Fowler #45
- *Gilbert Schools
- Glendale #40
- Glendale Union H. S.
- Isaac #5
- Kyrene #28
- Liberty #25
- Litchfield #79
- *Littleton #65
- Madison #38
- *Mesa Schools
- Paradise Valley Schools
- *Peoria Schools
- Phoenix #1
- Phoenix Union H. S.
- Riverside #2
- Roosevelt #66
- Scottsdale Schools
- Sierra Vista #97
- Tempe #3
- Tempe Union H. S.
- Washington #6
- Wickenburg Schools

Mohave County
- Mohave County Union H. S.

Navajo County
- Winslow Schools

Pima County
- *Ajo Schools
- Amphitheater Schools
- *Catalina Foothills #16
- Flowing Wells Schools
- Marana Schools
- Sahuarita Schools
- San Fernando #35
- Sunnyside Schools
- Tanque Verde #13
- Tucson Schools

Pinal County
- Casa Grande #4
- Coolidge Schools
- Florence Union H. S.
- Kenilworth #28
- Mammoth-San Manuel Schools
- Stanfield Schools
- Teltec #22

Santa Cruz County
- Patagonia #6
- Patagonia Union H. S.

Yavapai County
- *Ashfork Schools
- Bagdad Schools
- *Chino Valley #51
- Mingus Union H. S.
- Prescott Schools
- *Seligman Schools
- Verde #3

Yuma County
- *N. Yuma County Union H. S.
- Parker #27
- Yuma #1
- Yuma Union H. S.

Political Subdivisions	7,135

County Employees
- Cochise
- Coconino
- Graham
- Greenlee
- Maricopa
- Mohave
- Navajo
- Pima
- Pinal
- Santa Cruz
- Yavapai
- Yuma

City and Town Employees
- Avondale
- Chandler
- Clifton
- Casa Grande
- Douglas
- Flagstaff
- Gilbert
- Glendale
- Goodyear
- Kingman
- Mesa
- Prescott
- Safford
- Scottsdale
- Tempe
- Tolleson
- Wickenburg
- Williams
- Yuma

- Flagstaff Housing Authority
- Flood Control District of Maricopa County
- Maricopa County Water Conservation District
- Pima County Sanitary District
- *Tucson Airport Authority
- Tucson Housing Authority

Total Active Members	37,802
Inactive - Leave of Absence	6,265
Total Member Accounts	44,067
Retired Members	1,547
Total	45,614

*System Membership established July 1, 1962